

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1260**

State of Minnesota,
Respondent,

vs.

Cassandra Jane Gimmer,
Appellant.

**Filed April 24, 2023
Affirmed
Cochran, Judge**

Faribault County District Court
File No. 22-CR-18-761

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Cameron Davis, Faribault County Attorney, Blue Earth, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Eva F. Wailes, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Reilly, Judge; and
Cochran, Judge.

NONPRECEDENTIAL OPINION

COCHRAN, Judge

Appellant challenges the district court's order revoking her probation and executing her sentence, arguing that the district court did not make sufficient factual findings on the necessary factors under *State v. Austin*, 295 N.W.2d 246 (Minn. 1980). Because the district

court's findings on the *Austin* factors are adequate to support the revocation of her probation, we affirm.

FACTS

On November 13, 2018, respondent State of Minnesota charged appellant Cassandra Jane Gimmer with: (1) second-degree burglary, (2) check forgery, (3) theft, (4) receiving stolen property, and (5) possession of a dangerous weapon. The charges followed a search of Gimmer's home where officers found stolen checks, household items that had been reported stolen, and brass knuckles.

Gimmer pleaded guilty to second-degree burglary and check forgery, and the state dismissed the remaining charges pursuant to a plea agreement. After accepting the guilty pleas, the district court sentenced Gimmer to concurrent sentences of 48 months for second-degree burglary and 21 months for check forgery, stayed for five years. The district court also imposed several probationary conditions, including that Gimmer abstain from possessing and using alcohol and mood-altering chemicals, submit to random testing, remain law-abiding, and contact her probation officer as directed. The stayed, probationary sentence represented a downward dispositional departure.

Between October 2021 and June 2022, Gimmer's probation officers filed several probation-violation reports. Gimmer admitted most, but not all, of the violations. The district court ultimately executed her sentence in June 2022. A summary of the probation-violation reports and the relevant proceedings is set forth below.

First Probation-Violation Report

In October 2021, Gimmer's probation officer submitted a report alleging two violations: failing to remain law abiding and failing to abstain from chemical and alcohol use. At the probation-violation hearing, Gimmer admitted to failing to remain law abiding. The parties did not address, and the district court did not rule on, the other alleged violation. The district court reinstated Gimmer on the same terms of probation with the added condition that Gimmer either report to and serve 30 days in jail or enter treatment and follow any recommendations for aftercare. Gimmer opted to enter outpatient treatment.

Second Probation-Violation Report

In February 2022, a second probation-violation report was filed. The report alleged three violations: (1) Gimmer failed to comply with outpatient treatment and failed to report to jail when she was no longer compliant with treatment; (2) Gimmer failed to abstain from mood-altering chemicals because she tested positive for methamphetamine in January; and (3) Gimmer failed to follow the recommendations of a chemical-dependency assessment completed in November 2021. Shortly thereafter, Gimmer's probation officer filed an addendum alleging additional violations, including that: Gimmer was discharged from outpatient treatment; Gimmer failed to meet with her probation officer as directed; and Gimmer had again failed to abstain from using controlled substances. The report and addendum both recommended that Gimmer's sentences be executed.

At a probation-violation hearing in March 2022, Gimmer admitted to each violation. Counsel for Gimmer then informed the district court that Gimmer had been accepted into an inpatient treatment facility known as Wellcome Manor, which would address both her

chemical-dependency and mental-health issues. Gimmer’s counsel asked the district court to allow Gimmer to continue on probation so that she could enter the treatment program at Wellcome Manor. Counsel for the state asked the district court to execute her sentences. The district court imposed an intermediate sanction on Gimmer—six months in the county jail and, upon completion, treatment at Wellcome Manor. The district court also ordered Gimmer to follow all recommendations for aftercare. Finally, the district court reinstated all other conditions of her probation and extended the probation period from five years to ten years.

Hearing Regarding Jail Rule Violations

A few weeks later, the district court held a “continued probation violation hearing” because it had come to the court’s attention that Gimmer was “consistently violating the rules in the jail.” The district court noted that it was reported that Gimmer had flooded her jail cell with water and had repeatedly called a staff member by a vulgar name. Gimmer acknowledged her behavior, stating that the occurrences happened during her first day in jail and that she was still “heavily under the influence of drugs” at the time. After hearing from the parties, the district court amended Gimmer’s sentence to add a probationary condition that she comply with jail rules and regulations and be on good behavior while in jail.

Third Probation-Violation Report

In April 2022, Gimmer requested a furlough from jail to start inpatient treatment at Wellcome Manor. After hearing from the parties and there being no objection from the state, the district court granted the furlough request. A few weeks later, Gimmer’s

probation officer filed a report alleging that Gimmer had violated probation by failing to complete treatment. The report alleged that Gimmer was discharged from Wellcome Manor at the request of staff because she was “not taking medications or managing her medical needs” and “did not respect the boundaries of other clients in the facility on multiple occasions.” The report recommended that her sentences be executed.

After conducting a contested probation-violation hearing, the district court concluded that the evidence was not sufficient to support the alleged probation violation—failure to complete treatment. The district court found that, while Gimmer was uncooperative in the treatment program, the record was not clear that she was “actually discharged” from the program. Because the district court did not find a violation, the district court did not revoke her probation but instead rescinded Gimmer’s furlough and reinstated her on probation under the same conditions and with the previously imposed intermediate sanction of six months in jail. Before doing so, the district court told Gimmer that, if the state had established a probation violation, it would have been “very easy to say that . . . not executing [her] sentence would unduly depreciate the nature of the violation.”

Furlough Request to New Ulm Medical Center

In June 2022, Gimmer filed a motion requesting a furlough from jail to the New Ulm Medical Center for inpatient treatment. The district court granted the motion. The district court also ordered Gimmer to remain law abiding during the furlough period, to “participate in all required programming” while in treatment, and to “comply with all staff directions.” The district court told Gimmer that if she successfully completed treatment, she would not be required to serve the remainder of her six-month jail sentence but would

be required to “follow any requirements for aftercare or outpatient treatment from that point forward.”

Fourth Probation-Violation Report

Shortly after being granted a furlough to New Ulm Medical Center, Gimmer was discharged from the facility “not through any fault of her own” and returned to jail. She was to stay in jail for a few days until being moved to a different treatment facility. While in jail, Gimmer engaged in behavior that led her probation officer to file a violation report. The report alleged that Gimmer had violated probation by failing to abide by jail rules.

Gimmer admitted to the probation violation, agreeing that she got into a verbal disagreement with staff, was disrespectful and rude, and used abusive language. She explained that, at the time, she was “emotionally overwhelmed” and responded inappropriately to jail staff in violation of jail rules. The district court determined that there was a sufficient factual basis for her admission and found that Gimmer violated “a clearly established condition of probation” that she follow all jail rules. The district court then gave the parties an opportunity to address the appropriate sanction. Counsel for Gimmer argued that Gimmer’s misconduct in jail did not justify the execution of her 48-month prison sentence. He asked the district court to allow her to continue on probation and enter treatment at a third inpatient facility. Counsel for the state argued that a harsher penalty for the violation could be justified because the district court had given Gimmer repeated chances.

The district court executed Gimmer’s sentence. The district court found that “in isolation, the conduct that makes up this violation would not justify execution of her

sentence; however, in this case, it's not in isolation. Ms. Gimmer received a downward dispositional departure when she was sentenced originally." The district court noted that Gimmer's probation had been reinstated twice already. Finally, the district court found that: "We're at the point now, where she is in need of correctional treatment that can most effectively be provided during confinement and it . . . would unduly depreciate the seriousness of the violation if her probation were not revoked." Gimmer now appeals.

DECISION

Gimmer challenges the district court's order revoking her probation. Before revoking probation, the district court must (1) "designate the specific condition or conditions that were violated," (2) "find that the violation was intentional or inexcusable," and (3) "find that [the] need for confinement outweighs the policies favoring probation." *Austin*, 295 N.W.2d at 250. These three factors, commonly known as the *Austin* factors, require district courts to "seek to convey their substantive reasons for revocation and the evidence relied upon." *State v. Modtland*, 695 N.W.2d 602, 608 (Minn. 2005). "This process prevents courts from reflexively revoking probation when it is established that a defendant has violated a condition of probation." *Id.*

"A district court has broad discretion in determining if there is sufficient evidence to revoke probation" and we reverse "only if there is a clear abuse of that discretion." *Id.* at 605 (quotation omitted). "A district court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record." *State v. Hallmark*, 927 N.W.2d 281, 291 (Minn. 2019) (quotation omitted). We review

whether a district court has made the necessary *Austin* findings de novo. *Modtland*, 695 N.W.2d at 605.

Gimmer argues that the district court abused its discretion when it revoked her probation without making sufficient findings on the *Austin* factors. We address each factor and conclude that the district court's findings are adequate to support the revocation of Gimmer's probation.

I. The district court did not abuse its discretion when it found that Gimmer violated a condition of her probation.

To satisfy the first *Austin* factor, the district court must designate the specific probation condition or conditions that the individual violated. *Austin*, 295 N.W.2d at 250. Here, the district court found that Gimmer violated the condition of her probation that she abide by jail rules. The district court also noted that Gimmer had multiple prior probation violations.

On appeal, Gimmer argues that the district court's findings on the first *Austin* factor are not sufficient because the district court failed to specify exactly "what probation violation led to [the] revocation." In support of her argument, Gimmer acknowledges that the district court found that she violated probation by not following jail rules, but she emphasizes that the district court also stated that her failure to follow jail rules "in isolation, . . . would not justify execution of her sentence." On this basis, she contends that the district court's findings on the first *Austin* factor are inadequate. We are not persuaded.

As discussed above, the supreme court specified that the first *Austin* factor is satisfied when the district court "designate[s] the specific condition or conditions that were

violated.” *Id.* Here, the record reflects that the district court met that requirement. Based on Gimmer’s admission at the hearing, the district court specifically found that Gimmer “violated a clearly established condition of probation that she follow the rules of whatever jail facility she is in.” This finding is sufficient to satisfy the first *Austin* factor. And the record further reflects that this probation violation, along with other relevant facts, served as the basis for the revocation. The district court did not abuse its discretion in its findings on the first *Austin* factor.

II. The district court did not abuse its discretion when it found that Gimmer’s violations were intentional and inexcusable.

The second *Austin* factor requires the district court to find that the probation violation was intentional and inexcusable. *Id.* Gimmer contends that the district court failed to make such a finding and that the record does not support one. We disagree.

Although it is preferable for the district court to explicitly use the words “intentional” or “inexcusable,” the second *Austin* factor may be satisfied when the district court makes specific findings indicating that one or more probation violations were intentional or inexcusable without using those specific terms. *See id.* at 250; *see also State v Wolhard*, No. A17-0629, 2017 WL 5077565, at *2 (Minn. App. Nov. 6, 2017) (concluding that “[a]lthough the district court did not explicitly use the words ‘intentional’ and ‘inexcusable,’ the substance of its reasoning and the evidence it reviewed in making

the decision to revoke appellant’s probation support the court’s finding” as to the second *Austin* factor), *rev. denied* (Minn. Jan. 16, 2018).¹

Here, we conclude that the district court made sufficient findings on the second *Austin* factor. At the probation-revocation hearing, the district court noted that Gimmer knew that she was instructed to follow jail rules as a condition of her probation. The district court also expressly found that Gimmer “ha[d] the ability to comply with the rules” while in jail, but “she chose not to comply.” By finding that Gimmer knowingly chose to *not* comply with jail rules, the district court in effect found that Gimmer’s probation violation was intentional and inexcusable. Thus, the district court did not abuse its discretion in making its findings under the second *Austin* factor.

III. The district court did not abuse its discretion when it concluded that the need for confinement outweighs the policies favoring probation.

The third *Austin* factor requires the district court to make a finding that the need for confinement outweighs the policies favoring probation. *Austin*, 295 N.W.2d at 250. The district court may find that the need for confinement outweighs the policies favoring probation if at least one of three subfactors is met: (1) “confinement is necessary to protect the public from further criminal activity,” (2) the offender needs correctional treatment that can be provided most effectively in prison, or (3) reinstating probation “would unduly depreciate the seriousness of the violation.” *Modtland*, 695 N.W.2d at 607. In making its determination, the district court “must balance the probationer’s interest in freedom and

¹ Nonprecedential opinions are not binding authority but may be cited as persuasive authority. Minn. R. Civ. App. P. 136.01, subd. 1(c).

the state’s interest in insuring his rehabilitation and the public safety.” *Id.* at 606–07 (quotation omitted). The district court may also consider “the original offense and the intervening conduct of the offender” as part of its analysis. *Id.* at 607. But revocation must not be “a reflexive reaction to an accumulation of technical violations.” *Austin*, 295 N.W.2d at 251 (quotation omitted).

Here, the district court found that both the second and third subfactors were satisfied and supported revocation of probation. On appeal, Gimmer argues that the district court did not engage in a substantive analysis to support its findings and that the record does not support the district court’s determination that the second and third subfactors were met. This argument is unavailing.

We limit our analysis to the third subfactor because the presence of just one subfactor is sufficient to support revocation. *See Modtland*, 695 N.W.2d at 607 (outlining the three subfactors in the alternative). Regarding the third subfactor, the district court specifically found that it “would unduly depreciate the seriousness of the violation” if Gimmer’s probation was not revoked. The district court reasoned that Gimmer received a downward dispositional departure on her original sentence and had been reinstated on probation after several prior violations. The district court emphasized that, given Gimmer’s history of probation violations, Gimmer’s most recent probation violation was not an isolated incident but was instead part of a continuing pattern of failing to follow the rules and conditions imposed upon her during probation. On this basis, the district court found that reinstating probation would unduly depreciate the seriousness of Gimmer’s most recent violation.

The record supports the district court’s determination. As the district court correctly noted, Gimmer was granted a downward dispositional departure at sentencing. *See State v. Fleming*, 869 N.W.2d 319, 331 (Minn. App. 2015) (providing that a district court may consider a “grant of a downward dispositional departure when deciding whether to revoke probation”), *aff’d*, 883 N.W.2d 790 (Minn. 2016). And Gimmer was reinstated on probation twice prior to the revocation of probation. After her first probation violation for failing to remain law abiding, Gimmer was reinstated on probation and given the opportunity to complete a treatment program. But Gimmer left the treatment program and failed to abstain from chemical use, resulting in additional probation violations. And most recently, while Gimmer was in jail awaiting a transfer to another treatment program, she again violated a condition of probation by failing to follow jail rules. In sum, the record supports the district court’s finding that it “would unduly depreciate the seriousness” of the most recent violation if probation was not revoked. The district court’s decision to revoke probation was not a reflexive reaction but rather a well-reasoned determination.

We are not persuaded otherwise by Gimmer’s argument that the district court should not have revoked Gimmer’s probation because the district court could have imposed other sanctions short of revocation to address the seriousness of the probation violation. Gimmer suggests that the court could have instead ordered her to serve the remainder of her six-month jail term or it could have imposed a rigorous check-in system with her probation officer or house arrest while in a treatment-aftercare program. But the district court considered and expressly rejected Gimmer’s request for intermediate sanctions. *See id.* at 331-32 (affirming the district court’s decision to revoke probation when the district court

considered and rejected alternative treatment options). Moreover, Gimmer cites no caselaw, and we are aware of no caselaw, that requires a district court to impose a different sanction when all three *Austin* factors are met. Thus, the district court did not abuse its discretion by revoking Gimmer's probation.

Affirmed.